

# EXHIBIT D

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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: 04-CV-397  
: September 13, 2011  
: 500 Pearl Street  
: New York, New York  
: PALESTINE LIBERATION ORGANIZATION, et al, :  
: Defendants. :  
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TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE  
BEFORE THE HONORABLE RONALD L. ELLIS  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 better address but they're looking for him.

2 MR. TOLCHIN: He does have a book publisher.

3 THE COURT: Well, either of you are free to find  
4 anybody that you think would have relevant information. Your  
5 obligation under initial disclosures is to the extent that you  
6 have it you give the best information to the other side and  
7 then we'll move on from then.

8 As to the Rule 35 examinations, let's get to the  
9 issue. First of all, I understand about half of the people are  
10 in Israel. What about the other half? Are they at issue in  
11 this -- on the question of where to get their examination?

12 MR. TOLCHIN: Your Honor, before we parse it that way,  
13 coming over here today and going over these materials this  
14 morning, it occurred to me, and I blame myself for not having  
15 thought about this before, but there's a lot of plaintiffs but  
16 not all the plaintiffs are claiming the sorts of injuries that  
17 even give rise to a Rule 35 examination. In other words, there  
18 are some people who were killed and physically injured.  
19 There's some people who claim psychological injury or post  
20 traumatic stress disorder, some kind of pathological treatable  
21 psychiatric condition that's a result of the attack in  
22 question.

23 But there's other people whose claims are limited to  
24 grief and distress but not something we would call a doctor to  
25 prove at trial. So when -- I would have to -- I'm sorry I

1 don't -- I can't tell you an exact number right now but I think  
2 that when we look at it like this the number of people who  
3 actually have to be -- will have to be examined will get a lot  
4 smaller than we were talking about. Somebody's -- if  
5 somebody's family member was killed or injured and he has grief  
6 and distress but he hasn't gone -- it's not the sort of grief  
7 and distress that puts somebody in a -- into psychiatric  
8 treatment or psychological treatment I don't think a Rule 35  
9 examination is in order there. I mean it would -- if  
10 somebody -- you wouldn't call a doctor to prove the case and  
11 you wouldn't call the doctor to refute the case. That would in  
12 effect -- that part of the case would go in just based on the  
13 witness' testimony and the discovery for that is the -- for the  
14 defendant's side would be the deposition.

15 THE COURT: I don't think you can state unequivocally  
16 that if you don't use a psychiatrist somebody wouldn't use one  
17 to rebut what they say.

18 MR. TOLCHIN: Nothing is unequivocal, you're right.  
19 Generally speaking.

20 THE COURT: But in answer to the question that I asked  
21 what about the other half of the people? Is there even an  
22 issue about where they live, any Rule -- you bring up the  
23 question of whether or not there ought to be a Rule 35  
24 examination. That's always going to be an issue. I mean --

25 MR. TOLCHIN: Nineteen of the 42 plaintiffs reside in

1 Israel. One resides in France and --

2 THE COURT: By my quick calculation that leaves 22  
3 that don't fit that description.

4 MR. TOLCHIN: I believe they live in the United --  
5 some place in the United States.

6 THE COURT: Some place?

7 MR. TOLCHIN: Right. Not necessarily in the Southern  
8 District of New York is my point.

9 THE COURT: So is this -- so my question is, is this  
10 dispute only about the ones that are out of the country?

11 MR. TOLCHIN: Well, that's the biggest dispute. I  
12 mean if somebody lives in New Jersey I'll grant you that it's  
13 easy to --

14 THE COURT: Even though it's a foreign jurisdiction.  
15 Okay. All right. We're going to -- if there are issues with  
16 respect to the people who are not outside the continental  
17 United States then you need to make sure that there isn't -- I  
18 mean I don't want to do this piecemeal. That is, as to the  
19 other 22 people if the -- if in this district and if you don't  
20 have a compelling reason for doing it some place then I expect  
21 that you'll make that known to the defendants so that we're --  
22 we don't find out later on that there's somebody who has a  
23 problem. So you do have to ask all of the -- even the ones who  
24 are here but are not if they have any issues. I don't want  
25 any assumptions about whether or not there's going to be any --